

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1227 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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HABIBBHAI MAHMADBHAI-M I. DESEASED THROUGH HIS HEIR  
Versus  
ABDULKUDDUS HAJI ISMAILBHAI MEMON  
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Appearance:

MR V C DESAI for Petitioners  
MR BHARAT J SHELAT for Respondent No. 1, 2  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/02/2000

ORAL JUDGEMENT

#. The petitioners are the heirs and legal representatives of the original tenant Mahmedbhai Ibrahimbhai who was occupying the suit premises. The respondents herein are the owners of the suit premises

situated in Dhabhan Bhagol in Nadiad town. It is alleged by the plaintiff that the suit property was let out to the original tenant Mahmedbhai Ibrahimbhai at a monthly rent of Rs.21.25 ps. That the tenant was to pay the rent regularly every month. It is alleged by the plaintiff that after the suit premises was renovated the defendant had agreed to pay the rent at the rate of Rs. 80/- p.m. That the predecessor in title of the present plaintiffs had informed the defendant that he had sold the property to the plaintiff. That the defendants had not paid the rent since 10.6.1976 and therefore, notice under section 12(2) of the Bombay Rent Act (hereinafter referred to as the said Act) was given by the plaintiff to the defendant but the defendant did not comply with the suit notice. Therefore, the plaintiff filed the Suit in the court of learned Civil Judge (JD), Nadiad for getting possession of the suit premises on the ground of arrears of rent.

#. The deceased defendant resisted the suit by filing written statement at exh.15. He contended that the suit was not true. He took a contention that one Ismailbhai was the original owner and that he had taken the suit premises from him in the year 1956. That the rent was fixed at Rs. 21.25 p. He also raised a dispute of standard rent in his written statement. It was contended that he was ready and willing to pay the rent to the landlord but the landlords was refusing to accept the same. On these and other grounds, the suit was resisted by the original defendant. The original defendant-tenant had expired and his heirs and legal representatives were brought on record by an order below oiexh.17. The heirs and legal representatives of the ori. defendant also filed written statement exh.56 practically on the same lines. On the basis of the pleadings of the parties the Trial Court framed various issues at exh. 37. After recording the evidence and after hearing both the sides the Trial Court by its judgment and order dated 21.3.1983 dismissed the suit of the landlord for possession. The Trial Court came to the conclusion that the standard rent of the suit premises was Rs. 80/- p.m. It was found that the suit notice was legal. It was also found that the defendant has proved that he is ready and willing to pay the rent. The learned Trial Court has found in para 19 of his judgment that it was admitted by the plaintiff no.1 that after the service of the suit notice, the deceased defendant had sent M.O. and that the defendants have paid full rent in the court. The Trial Court also found that the plaintiffs have refused to accept the MO It was therefore, found that the defendant tenant was ready and willing to pay the rent and therefore, on the aforesaid the suit of the plaintiffs was dismissed with

costs.

#. The judgment and decree passed by the Trial Court was challenged by the unsuccessful landlords by filing Regular Civil Appeal No.138 of 1983 before the learned District Judge, Kheda at Nadiad. Said appeal was heard by the learned Extra Assistant Judge, at Nadiad and the learned Judge by his judgment and order dated 12.7.1984 allowed the appeal and accordingly decreed the suit of the plaintiffs for possession. The cross objections filed by the tenants regarding fixation of standard rent was dismissed.

#. The tenants have challenged the aforesaid decree of the learned Appellate Judge by way of filing this revision application.

#. At the time of hearing of this revision application Mr. V.C.Desai the learned advocate for the petitioners has pointed out that looking to the evidence on record it is clear the defendants-tenants were always ready and willing to pay the rent and therefore, he was protected under section 12(1) of the Bombay Rent Act. It was submitted that in response to the suit notice the deceased tenant had sent the entire amount of rent by MO and in that view of the matter if the payment is made within one month from the date of the receipt of the suit notice the suit itself would not be maintainable and there was no cause of action available to the landlord to file the suit. It is true that if the tenant has paid the rent due on receipt of receipt of demand notice, it cannot be said that he has neglected the payment of rent and therefore, in that eventuality there was no question for the landlord to file the suit on the ground of arrears of rent. However, the question which is required to be determined is whether the tenant had tendered the entire rent due by way of MO in response to the suit notice and that too within a period of one month. No doubt the Trial Court has found that the tenant was vigilant and he had sent the MO. However the learned Appellate Judge was of the opinion that there is no documentary evidence on record to show that the tenant had sent any MO to the landlord. In this connection it would be necessary to refer to the evidence of the landlord. The landlord has stated in his evidence at exh.48 that after the suit notice the defendant had sent MO but since it was not covering the entire rent he had not accepted the same. Therefore, the fact about sending the rent by MO is not in dispute. The question therefore, which is required to be considered is whether

the entire rent was sent by the tenant or not. If the full amount of rent was not sent within one month from the date of receipt of the demand notice then naturally it cannot be said that the tenant has paid the entire amount of rent and if the entire amount was paid within one month of the receipt of the demand notice, then naturally there was no cause of action available to the plaintiff for filing the suit. In this back ground, it is pertinent to refer to the written statement filed by the deceased tenant at exh.15. In his written statement the deceased tenant has already stated that he had sent the MO of full amount to the original owner and that he was ready and willing to pay the amount of rent. Mr. Desai learned advocate for the petitioner has submitted that after filing of the written statement since the original tenant died, his heirs and legal representatives were brought on record. The heirs are the widow, sons and daughters of the deceased tenant. The learned Appellate Judge has found in para 25 of his judgment that the defendant himself has not taken this contention in his written statement that he had remitted the amount by MO. However, looking to the written statement it seems that the aforesaid fact stated by the learned Appellate Judge is not correct because the original tenant had definitely stated in his written statement that he had sent the amount of rent to the original owner but the same was refused. Not only that even the landlord has also not denied the said fact in his evidence. The landlord has not stated anything in his evidence as to the amount sent by way of MO which was sent by the tenant. It was the duty of the landlord therefore to state the actual amount of the MO which was sent by the tenant. Simply by saying that the MO was not covering the entire period is not enough unless and until the landlord points out as to what actual amount of MO was received by him. Therefore, there is nothing on record to show the actual amount for which the MO was sent by the tenant. As stated earlier if it covers the entire rent then he is protected under section 12(1) of the Bombay Rent Act and if there is a short fall of the amount of rent due, then naturally the tenant cannot get the benefit of proving that he was ready and willing to pay the rent. But since the evidence on record as stated above is not sufficient, I deem it fit and proper to remand the matter back to the learned Appellate Judge, especially when it has been argued by Mr. Desai that as a matter of fact the entire amount of rent was sent by the deceased tenant to the landlord. But since the heirs of the deceased tenant at that time were not having particular knowledge about the quantum they could not lead proper evidence at that stage.

#. In view of the aforesaid facts and circumstances in the interest of justice I set aside the judgment and order of the learned Appellate Judge passed in Civil Appeal No. 138 of 1983 with a direction that the learned Appellate Judge may call for the finding from the Trial Court on the limited issue as to whether the defendant had sent the full amount to the landlord in response to the demand notice under section 12(2) of the Bombay Rent Act since the evidence is not sufficient to give a positive finding on the aforesaid question. The learned Appellate Judge may frame necessary issue on the aforesaid point and may direct the Trial Court to record its finding in respect of the aforesaid issue and on receipt of the finding from the Trial Court, the learned Appellate Judge may dispose of the appeal on or before 31.7.2000. The matter is sent back to the learned Appellate Judge for disposal of the appeal as stated above and in accordance with law. The parties are directed to appear before the learned Appellate Judge on 15.3.2000 either in person or through their legal representatives and it will not be necessary for the learned Appellate Judge to issue fresh summons to the parties. This Revision Application is accordingly allowed. Rule is made absolute to the aforesaid extent. R & P may be sent back forth with. No order as to costs.

(P.B.Majmudar.J)

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